

Contract Law

1) A contract is a legally binding agreement between two or more parties and contract law sets out the framework and legal obligations for these promises (Mottershead and Grant, 2009, p.366). To establish whether Kate and Jack have formed a contract (prior to Kate arriving at the event), it is vital to analyse the common rules of offer and acceptance (agreement) and this will involve assessing the interaction with an objective approach as the courts can not read the two parties' minds (Quinn, 2019, p. 3).

The first essential element of a valid contract is an agreement, which is divided into offer and acceptance and importantly, there can be no enforceable contract unless the parties have come to an agreement (Jaffey, 1975, p. 604). An offer may be expressed orally, in writing or by conduct (Advocates For International Developments, 2016). Importantly, an offer is an expression of willingness to enter a contract on specified terms with the purpose or intention that it will become bounding once accepted by the offeree (the person receiving the offer) (Advocates For International Developments, 2016). Differing from offers, an invitation to treat occurs in the starting stage of a transaction which one party invites the other to make an offer or to enter into negotiation as illustrated in '*Gibson v Manchester City Council*' (1979). Moreover, as a general rule, advertisements are an invitation to treat rather than offers because they are opportunities to generate interest and they are usually not open to instant acceptance unless it requires a performance by the offeree (Andrews, 2012, p. 36). The letter Jack sent out to local musicians was an attempt to generate interest from artists who are willing to perform, but not necessarily on the specified term (£500 per gig), because he

states that he is 'willing to negotiate', which gives the offerees a chance to make an offer that Jack can then choose to accept or reject (Andrews, 2012, p. 36). Similarly, the case of '*Partridge v Crittenden*' (1968) shows that an advertisement specifying goods or services at a certain price is a mere invitation to treat as opposed to an offer; As a result, Jack can not be bound to offer the chance to perform and pay everyone who sees his advertisement and reply, because his letter is a mere invitation to treat. It should be noted that the crucial difference between an invitation to treat and an offer is that: "An acceptance of an invitation of treat does not create a contract, and acceptance of an offer does. Acceptance of an invitation to treat is in fact an offer" (Quinn, 2019, p.5). Consequently, Kate's reply to Jack's letter will certainly constitute as an acceptance of an invitation to treat thus making an offer to Jack to perform at the event for £500 (on 15th May), which will then require an acceptance from Jack in order to fulfill mutual obligations (Bilateral contract) (McDermott and McDermott, 2001, p. 4). The rules suggest that to finalise an offer to enter into a bilateral contract, an acceptance must be communicated to the offeror (Wilkinson-Ryan and Hoffman, 2015, p. 1285). In addition, acceptance must correspond entirely with the terms of the offer (Mirror image rule), and it also must be final together with unconditional (Pannebakker, 2013, p. 134). Moreover, the former principle is important (and should be established first) because without it, for example, Kate could potentially enter a binding contract she did not anticipate if Jack decides to accept the offer but fails to communicate this to her effectively (Quinn, 2019, p. 21). In the case of '*Entores Ltd v Miles Far East Corp*' (1955), Lord Denning prescribed two types of communication of acceptance which are non-instantaneous (applies to the post) and instantaneous communication (applies to everything else).

Furthermore, offers that are accepted through instantaneous communication such as email or telephone, will usually take effect at the time and place of receipt (Advocates For International Developments, 2016) whereas acceptance through non-instantaneous communication such as post will take effect once it is posted. Although acceptance of an offer is commonly made orally, in writing or by conduct (for example delivering goods as a response to an offer to buy), an offeror could prescribe a method of acceptance for their offer (Harvard Law Review, 1920, p. 595). In the context of Kate's offer, if she had informed Jack that communication is not required to accept her offer, then it would be reasonable for her to show up at the event in spite of not receiving a letter back from Jack (Harvard Law Review, 1920, p. 596). However, according to the case of *'Felthouse v Bindley'* (1862), an offeror cannot specify that the offeree's silence will amount to an acceptance unless, as seen in *'Re Selectmove Ltd'* (1993), the offeree suggest that their silence is sufficient for an acceptance. Therefore, since Jack has not suggested silence as sufficient for acceptance (to any offers) in his advertisement, Kate cannot infer that her offer has been accepted which means that the two have not formed a contract due to lack of acceptance (Harvard Law Review, 1920, p. 596).

2) When offers are made, they will not continue indefinitely (they come to an end at some point) and the common law provides that offers may cease to exist in the following circumstances: Revocation from the offeror (anytime up until acceptance); After a reasonable length of time (known as lapse); or when it has been rejected by the offeree (usually through a counter-offer) (Quinn, 2019, p. 9). Offers made by one party could certainly come to an end after it has been rejected by another, but an offer could equally cease to exist where an offeree makes a conditional offer or a counter-offer

(Corbin, 1917, p. 197). Therefore, in the context of Logan's response to Jack's advertisement, Logan has rejected the initial offer (made as a result of accepting the invitation to treat) by placing his own offer to perform at the student union for £750, which cancels the original offer (£500 per gig) (Corbin, 1917, p. 198); This principle was established in the case of *'Hyde v Wrench'* (1840), where the court ruled that a counter-offer will terminate the original offer after the claimant insisted upon returning to the original offer that he had rejected by making a counter-offer. As a result, if Jack chooses to reject Logan's offer, Logan can no longer insist upon performing under the original offer, unless Jack makes a new offer on exactly the same term (which he is not obligated to do) (Quinn, 2019 p. 10). Importantly, since Logan's offer was made by post (non-instantaneous communication), the ruling in *'Adam v Lindsell'* (1818) provides that acceptance by post will take effect as soon as it is posted rather than communicated (The Postal Rule). This exception to the general rule that acceptance must be communicated applies to not only when the letter it is posted, but also when it is posted and subsequently gets lost in the post (or never reaches the offeror), as demonstrated in the case of *'Household Fire Insurance v Grant'* (1879). According to the facts, a binding contract was formed between Jack and Logan on the 1st of May after Jack posted his acceptance letter; it was reasonable for Jack to accept Logan's offer by post because it was the method used to make an offer (*'Henthorn v Fraser'* (1892)). Moreover, since Jack's acceptance has been posted, Logan can no longer revoke his offer with respect to the postal rule; Equally, Jack can no longer revoke his acceptance even if he uses an instant method of communication such as telephone (which can be received before the acceptance) (Pugsley, 1976, p. 3). However, an offeror could avoid

the postal rule by stating in the term of their offer that an acceptance will only be effective once it is communicated as expressed by the court in '*Howell Securities Ltd v Hughes*' (1974) . Nevertheless, Jack is in breach of contract for not letting Logan perform at the event because the common law states that acceptance must correspond with the terms of the offer (agreeing to let Logan perform for £750) and failure to comply means that the "Mirror Image Rule" has been broken (Quinn, 2019, p. 17). In addition, the breach of contract has also made Logan angry (despite being paid the £750) because he anticipated to make an extra £500 from his merchandise, however, there are remedies available to Logan; The general rule for damages is to satisfy innocent parties' entitlement to such damages by putting them in the position they would have been in if the contract had been completed as planned ('*Robinson v Harman*' (1848)). The damages that are mainly available to Logan is Pecuniary loss, and these are calculated to compensate the innocent party who has suffered financial loss from a result of not receiving the performance agreed in a contract (Quinn, 2019, p. 281). However, according to the case of '*Hadley v Baxendale*' (1854), damages recoverable from a breach of contract should be where the loss would naturally occur due to the breach, or, where 'the loss may reasonably be supposed to have been in the contemplation of the parties at the time the contract was made'. As a result, since Logan had not informed Jack about the merchandise he intended to sell at the student union (prior to an agreement), he can not claim for the financial loss as this will be deemed as too remote from the breach (Pearse and Halson, 2008, p. 85).

3) Jack and DJ Mason formed a contract with the understanding that DJ Mason will perform for three hours in exchange for £1,500; The entire performance rule used in

the case of '*Cutter v Powell*' (1795) provides that performance must be exactly the same as the requirements laid down in a contract. DJ Mason did not perform entirely, but he could potentially benefit from the 'Substantial performance' rule used in the '*Hoenig v Isaacs*' (1952) case, which allows a party to still recover damages if they have performed the essential parts of a contract (with only minor defects) even if it does not match the terms of an agreement. However, Jack is not obligated to pay DJ Mason because their agreement was under the condition to have DJ Mason perform for three hours, and the 'substantial rule' only applies to breach of warranty or innominate terms, not a condition of the contract (Cambridge Law Journal, 1953, p. 438).

4) Where two or more parties make an agreement without the intention to be legally bound, the courts will not regard such agreement as a contract (parties must intend to create legal relations) (Quinn, 2019, p. 48). Moreover, cases on intention to create legally binding contracts are divided into two groups: Social and Domestic agreements (Husband and wife, parent and child, acquaintances) and Commercial agreements (Hepple, 1970, p. 127). Importantly, agreements between acquaintances are presumed not to be binding whereas commercial agreements are strongly presumed to be binding (both presumptions can be rebutted) (Hepple, 1970, p. 129). Furthermore, presumptions that social agreements (between acquaintances) are not intended to create legally binding contracts can be rebutted if the parties have a history of contracting on the similar agreements questioned in court as seen in the case of '*Simpkins v Pays*' (1955); From the context of Jack and Nell's agreement, it could be inferred that Nell performs her stand-up annually as Jack's statement included the word "Regular", which means that he usually pays her for it and he can reasonably be

expected to do so again (Therefore there was intention to create legal relations). On the other hand, presumptions that commercial agreements intend to create legal relations are rebutted if the words or offer implies that legal relations were not intended (Quinn, 2019, p.52).

5) In common law, consideration must be established in order for an agreement to be binding (Wright, 1936, p. 1226). Consideration is defined in the case of '*Currie v Misa*' (1874) as something which consist either in some benefit, interest, right, or profit accruing to the one party, or some loss or responsibility, forbearance, detriment, given, suffered, or undertaken by the other. Moreover, there is valuable consideration where the promisor obtains a benefit and the promisee suffers a detriment; So in Nell and Jack's situation, Nell would be suffering a detriment (performing) and Jack would be obtaining a benefit (this could also go both ways) (Quinn, 2019, p. 73). Executory consideration exist when both parties make promises to each other that requires something to be accomplished in the future after the contract has been made; If Jack had explicitly told Nell on the 23rd of May that he will pay her £250 tomorrow if she performs her regular stand- up, then this will be considered an Executory consideration because it requires one party to perform now and the other to perform later (Quinn, 2019, p. 74). Furthermore, according to the case of '*Roscorla v Thomas*' (1842), a promise given after the contracting parties have contracted with one another to do something will not be sufficient for a consideration because the rules state that consideration must not be past; During their interaction, Nell was not promised anything when Jack asked her to perform, so therefore it could be inferred that the promise that was given the next day can not be regarded as a valid consideration for Nell's

performance because it is past. However, it could be argued that Nell performing her stand-up is a good consideration for Jack's "unspoken" promise in his request to pay in the future (Implied Assumpsit) (Markesinis, 1978, p.60). This exception to the past consideration concept was approved in '*Lampleigh v Brathwait*' (1615), where the court expressed that past consideration is sufficient if it is given at the promisor's request and it is understood that something will be provided in return; Consequently, one may reasonably accept that because Jack had potentially paid Nell in the past for her comedy routine (in respect of Jack's statement), Nell's performance on the 23rd of May is good consideration and Jack should pay her the £250.

Bibliography

Advocates for International Development (2016). *Basic principles in English Contract Law*. Available at:

<http://www.a4id.org/wp-content/uploads/2016/10/A4ID-english-contract-law-at-a-glance.pdf> (Accessed: 16 February, 2021).

Andrews, N. (2012) 'Offer and Acceptance', *Cambridge University Press*, pp. 36-87.

Available at:

<https://www.cambridge.org/core/books/contract-law/offer-and-acceptance/C768F5530D7449A7CEA3DFC188EAF688> (Accessed: 16 February 2021).

Corbin, A. (1917) 'Offer and Acceptance, and Some of the Resulting Legal Relations', 26(3), pp. 169-206. Available at:

https://www-jstor-org.ezproxy.uwtsd.ac.uk/stable/786706?seq=1#metadata_info_tab_contents (Accessed: 18 February 2021).

Harvard Law Review (1920) 'Silence as Acceptance in the Formation of a Contracts', 33(4), pp. 595-598. Available at:

https://www-jstor-org.ezproxy.uwtsd.ac.uk/stable/1328040?seq=1#metadata_info_tab_contents (Accessed: 18 February 2021).

Hepple, B (1970) 'Intention to create legal relations', 28(1), pp. 122- 137. Available at: <https://heinonline.org/HOL/LandingPage?handle=hein.journals/camlj28&div=12&id=&page=> (Accessed: 23 February 2021).

Jaffey, A. (1975) 'Offer and Acceptance and Related Questions in the English Conflict of Laws', *The International and Comparative Law Quarterly*, 24(4), pp. 603-616. Available at: https://www-jstor-org.ezproxy.uwtsd.ac.uk/stable/758682?seq=1#metadata_info_tab_contents (Accessed: 16 February 2021)

Markesinis, B. (1978) 'Cause and Consideration: A study in Parallel', 37(1), pp. 53-75. Available at: <https://www.cambridge.org/core/journals/cambridge-law-journal/article/abs/cause-and-consideration-a-study-in-parallel/31A5D709CEFE20F914570028E30F70E1> (Accessed: 24 February 2021).

McDermott, P. and McDermott, J. (2001) *Contract Law*. 2nd Edn. Bloomsbury: Bloomsbury Professional.

M,M. (1953) 'Contract--Entire Contract--Doctrine of Substantial Performance', 11(3), pp. 438-439. Available at: <https://www.cambridge.org/core/journals/cambridge-law-journal/article/abs/contractentir>

[e-contract/doctrine-of-substantial-performance/DB3B517C1A5BF54E97635615E5B66109#article](https://www.cambridge.org/core/e-contract/doctrine-of-substantial-performance/DB3B517C1A5BF54E97635615E5B66109#article) (Accessed: 23 February 2021).

Mottershead, A. and Grant, A. (2009) *OCR Business Studies for A2*. London: Hachette UK Company.

Pannebakker, E. (2013) 'Offers and Acceptance and the Dynamics of Negotiations: Arguments for Contract Theory from Negotiation Studies', 1(2), pp. 131-141. Available at:
file:///home/chronos/u-19356f130f0d77be183311d7cbcc12dca8ea27e0/MyFiles/Downloads/ELR_2013_02_005__cropped_.pdf (Accessed: 17 February 2021).

Pearse, D. and Halson, R. (2008) 'Damages for Breach of Contract: Compensation, Restitution and Vindication', 28(1), pp. 73-98. Available at:
https://www-jstor-org.ezproxy.uwtsd.ac.uk/stable/20185361?seq=1#metadata_info_tab_contents (Accessed: 20 February 2021).

Pugsley, D (1976) 'Postal Contracts', 11(1), pp. 3-10. Available at:
https://www-jstor-org.ezproxy.uwtsd.ac.uk/stable/44026937?seq=1#metadata_info_tab_contents (Accessed: 20 February 2021).

Quinn, F. (2019) *Elliot & Quinn Contract Law*. 12th edn. Harlow: Pearson Education Limited.

Sekou Guilavogui

Ryan, T. and Hoffman, D (2015) 'The common sense of contract law', *Stanford Law Review*, 67(6), pp. 1269-1301. Available at:

https://www-jstor-org.ezproxy.uwtsd.ac.uk/stable/43920984?seq=1#metadata_info_tab_contents (Accessed: 17 February 2021).

Scott, K. (1955) 'Contract--Offer and Acceptance--Place of Acceptance', *The Cambridge Law Journal*, 13(2), pp. 148-151. DOI:

<https://doi.org/10.1017/S0008197300013659> .

Wright (1936) 'Ought the Doctrine of Consideration to Be Abolished from the Common Law?', 49(8), pp. 1225-1253. Available at:

https://www-jstor-org.ezproxy.uwtsd.ac.uk/stable/1333022?seq=1#metadata_info_tab_contents (Accessed: 24 February 2021).

'*Adams v Lindsell*' (1818) Court of King's bench, case 250. *Westlaw Edge UK*. [Online] Available at:

<https://uk.westlaw.com/Document/IA2AF943056B411DCA278890A8E9F65A4/View/FullText.html> (Accessed: 20 February 2021).

'*Carlill v Carbolic Smoke Ball Company*' (1892) Court of Appeal, case 256. *Westlaw Edge UK* [Online] Available at:

<https://uk.westlaw.com/Document/I82725780E42711DA8FC2A0F0355337E9/View/FullText.html> (Accessed: 16 February 2021).

Sekou Guilavogui

'*Currie v Misa*' (1876) House of Lords, case 554. *Westlaw Edge UK*. [Online] Available at:

<https://uk.westlaw.com/Document/IFB8CD820E42711DA8FC2A0F0355337E9/View/FullText.html> (Accessed: 24 February 2021).

'*Cutter v Powell*' (1795) Court of King's Bench, case 573. *Westlaw Edge UK*. [online] Available at:

<https://uk.westlaw.com/Document/I546B30D0627C11DC9430E0504D4B6071/View/FullText.html> (Accessed: 22 February 2021).

'*Entores LD. v Miles Far East Corporation*' (1955) Court of Appeal, case 327. *Westlaw Edge UK* [Online] Available at:

<https://uk.westlaw.com/Document/IA1B3E5F0E42711DA8FC2A0F0355337E9/View/FullText.html> (Accessed: 17 February 2021).

'*Fisher v Bell*' (1960) Divisional Court, case 394. *Westlaw Edge UK* [online] Available at:

<https://uk.westlaw.com/Document/IA7620F90E42711DA8FC2A0F0355337E9/View/FullText.html> (Accessed: 16 February 2021).

'*Gibson v Manchester City Council*' (1979) House of Lords, case 294. *Westlaw Edge UK* [Online] Available at:

<https://uk.westlaw.com/Document/IAEA50A00E42711DA8FC2A0F0355337E9/View/FullText.html>? (Accessed: 16 February 2021).

Sekou Guilavogui

'Holwell Securities Ltd v Hughes' (1974) Court of Appeal, case 155. *Westlaw Edge UK*.

[online] Available at:

<https://uk.westlaw.com/Document/IC3137260E42711DA8FC2A0F0355337E9/View/FullText.html> (Accessed: 22 February 2021).

'Hyde v Wrench' (1840) Court of Chancery, case 132. *Westlaw Edge UK*. [Online]

Available at:

<https://uk.westlaw.com/Document/I1F3F88D061B311DCAE2ACA9795A4A3D7/View/FullText.html> (Accessed: 20 February 2021).

'Partridge v Crittenden' (1968) Divisional Court, case 1204. *Westlaw Edge UK* [Online]

Available at:

<https://uk.westlaw.com/Document/I1A44EB40E42811DA8FC2A0F0355337E9/View/FullText.html> (Accessed: 17 February 2021).

'Paul Felthouse v Bindley' (1862) Court of common pleas, case 1037. *Westlaw Edge*

UK [Online] Available at:

<https://uk.westlaw.com/Document/I17560FB14FA011DC9025DF7105C537B4/View/FullText.html> (Accessed: 18 February 2021).

'Robinson v Harman' (1848) Court of Exchequer, case 363. *Westlaw Edge UK*. [Online]

Available at:

Sekou Guilavogui

<https://uk.westlaw.com/Document/I8E1E0B70C06011DD87EB9493380EA360/View/FullText.html> (Accessed: 20 February 2021).

'Roscorla v Thomas' (1842) Court of Queen's Bench, case 496. *Westlaw Edge UK*.

[Online] Available at:

<https://uk.westlaw.com/Document/I2A670BC0683311DD9AAA85376D18BC1B/View/FullText.html> (Accessed: 24 February 2021).

'Simpkins v Pays' (1955) Assizes, case 975. *Westlaw Edge UK*. [Online] Available at:

<https://uk.westlaw.com/Document/IA8A60BD0E42811DA8FC2A0F0355337E9/View/FullText.html> (Accessed: 23 February 2021).